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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	PR Docket No. 92-257
Concerning Maritime Communications	)	
	)	
Petition for Rule Making filed by	)	RM-9664
RegioNet Wireless License, LLC	)	

To: The Commission

REPLY COMMENTS

MOBEX COMMUNICATIONS, INC.

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March 8, 2001

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Summary of the Filing

On eleven important points, two actually operating AMTS carriers agree. Mobex and AMTA and Mobex and the Coast Guard also agree on some issues. Regionet Wireless License, LLC and Paging Systems, Inc. agree with the Commission on most points. The Commission should maintain incumbent licensees' service areas and provide the same level of interference protection as the Commission provides to trunked systems in the 800 MHz and 900 MHz bands.

The comments of Warren C. Havens should be rejected. To the extent that Havens's comments may have had any relevance to the instant proceeding, presented no reasons to support his positions.

The request of ARRL was beyond the scope of the instant proceeding. ARRL's suggestion would invert the relationship of primary AMTS and secondary amateur operations.

KM LPTV's untimely filed comments should be disregarded because KM's concern is too narrow in scope to be appropriate for rule making. Among broadcasters, KM was alone in filing comments directed to subjects which were apparently of interest only to KM.

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Petition for Rule Making filed by RegioNet Wireless License, LLC	)	RM-9664

To: The Commission

REPLY COMMENTS

Mobex Communications, Inc. (Mobex) and its subsidiary, Regionet Wireless License, LLC (Regionet) hereby respectfully submit their Reply Comments in the above captioned matter. In support of its position, Mobex shows the following.

Two Actually Operating AMTS Carriers Agree on All Major Points

Two actually operating Automated Maritime Telecommunications System (AMTS) carriers, namely, Mobex and Paging Systems, Inc. (PSI), agree on all of the following major points:

1. The Commission should adopt a geographic licensing plan.

2. Band Manager licensing would not be appropriate in the AMTS band, in which operating AMTS systems are already providing service to the maritime public.

3. Partitioning and disaggregation by AMTS licensees can accommodate any need for diverse uses.

4. A smaller number of geographic areas should be adopted, specifically, the areas suggested by Mobex and PSI.

5. Only one licensing scheme should be used for all AMTS spectrum.

6. No set-aside should be made for public safety use.

7. The standard for protection of incumbent systems by geographic based systems should be increased. An incumbent station's service area should be defined as its 17 dBu contour and the incumbent should be provided with 18 dB of protection against interference.

8. The potential for litigation should be reduced by amending the rule concerning the suitability of an AMTS station site and by removing the engineering study requirement for geographic based systems.

9. The Commission should adopt its proposal to remove the requirement to serve minor waterways and to require a level of service at five and ten year benchmarks, depending on the presence of major waterways within the area. The Commission should provide parity between incumbent and geographic area licensees with respect to construction periods.

10. The Commission should permit an AMTS operator to transmit data routinely and to use any form of data emission within its authorized spectrum.[1]

11. Bidding credits should be provided for small and very small businesses.

American Mobile Telephone Association (AMTA) agreed with Mobex on points 1, 3 through 6, and 9 through 11, above. AMTA did not comment on points 2 and 8. AMTA agreed with Mobex with respect to the definition of an incumbent's service area contour (point 7), but did not comment on the degree of electrical protection to be provided to an incumbent.

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[1] No party discussed the Commission's tentative conclusion at para. 37 of its Third Further Notice of Propose Rule Making to prohibit mobile-to-mobile communications. Mobex intends to demonstrate in an ex parte presentation that substantial differences between VHF and AMTS service make such a limitation inadvisable.

All parties commenting on the subject agree that a person should be permitted to acquire all AMTS spectrum in any region.

Mobex agrees with the United States Coast Guard that spectrum covered by an incumbent's authorization should automatically revert to the geographic area licensee under the conditions proposed by the Commission.

The Commission should take into account the state of the national economy and its likely effect on the ability of small and very small businesses to participate meaningfully in an AMTS auction. To assure participation by small and very small businesses, the Commission should adopt Mobex's suggestion that it revise its attribution rules to remove from the determination of gross revenues any historical revenues which had been obtained from now-discontinued operations.

It should be noted that, although one Class A television station licensee filed comments in the above captioned matter, no organization of broadcasters took the opportunity to file comments. In light of the absence of broadcast organization participation, the Commission should conclude that no issue of concern to major broadcasters was raised in the above captioned proceeding and the Commission should progress the public interest in new, competitive AMTS service as its primary concern.

The Comments of Warren C. Havens Should Be Rejected

While it is, frankly, difficult to find any relevance of most of the comments of Warren C. Havens (Havens) to the Commission's proposals in the above captioned proceeding, Mobex replies herein to Havens, insofar as his comments may seem to be germane to the instant matter.

Although Havens suggested that the service area contour should be defined at the 37 dBu level, he presented no reason in his comments to support his suggestion. Similarly, although he suggested that "co-channel separation should be the same as in the 220 MHz service," Havens comments at 16, Havens presented no reason to support his position. For the reasons explained and graphically demonstrated in Mobex's comments, an incumbent's service area contour should be protected at the level at which the incumbent designed its system, on which it based its application, and upon which the Commission granted an authorization. Mobex demonstrated why the service area of its incumbent systems should be defined at the 17 dBu level. Mobex demonstrated that the Commission's experience with automated systems has been that a protection ratio of 18 dB is required to assure reliable operation and control of the system and why the 10 dB level proposed by the Commission would be inadequate.

Havens presented no basis for his suggestion that the Commission demand information from incumbent AMTS licensees before proceeding to competitive bidding for geographic area licenses. The Commission has well established procedures for informing potential bidders of pending matters, the risks of which they may consider in forming their bidding strategy and for requiring the submission of information from incumbents after an auction has been completed,

see, *e.g.*, 14 FCC Rcd 21068, 21073 (1999); 13 FCC Rcd 1875 (WTB 1997). Havens provided no basis for the Commission to divert from its long-standing precedents.

The AMTS rules do not require a showing of need to obtain an authorization and do not require any certain minimum level of loading to retain or renew an authorization. In fact, Mobex AMTS facilities are used - heavily used in some areas - and certainly have sufficient vessel traffic to justify all authorized channels. Imposing a requirement for a showing of need would be entirely inconsistent with the concept of competitive bidding for a license. The Commission could not now reasonably impose a retroactive loading requirement on incumbent operators. Therefore, Havens's unsupported suggestions for attacking his competitors by imposing new paperwork burdens should be disregarded by the Commission.

Havens supported the eligibility of band managers, but no reason appeared to underlie his support for the concept. Although Havens would permit a band manager to obtain an AMTS license, he proposed to so severely constrain the band manager's business judgment that his plan would render the concept of band manager meaningless. Further, it would appear that the Commission does not have the authority which would be required to adopt Havens' band manager regime.

Havens failed to present any basis for his conclusory suggestion that the Commission should expand the number of major waterways. The list of major waterways suggested by the

Commission is reasonable and Havens presented no basis for allowing other agencies not under the Commission's control to revise the list.

A Lexis search of the Commission's releases over the past seven years found no reference, whatsoever, to a National Infrastructure Radio Service (NIRS), therefore, what Havens was referring to as NIRS was not made clear in his comments and his comments appeared to be directed to a non-existent proceeding. While the Commission has allocated spectrum to an Unlicensed National Information Infrastructure above 5 GHz, there appears to be no relationship between that unlicensed spectrum and the instant AMTS proceeding. Therefore, whatever was intended by Havens's references to "NIRS" should not detain the Commission in the instant proceeding.

The Commission's tentative conclusion at paragraph 48 of its Third Further Notice of Proposed Rule Making is correct – there is no need to prescribe a method for determining the potential for interference to a Television Broadcast station, especially a standard which was adopted on the basis of thoroughly outdated technical information. Havens's presented no support for his suggestion that allowing one AMTS applicant to select its methodology would be unfair to another AMTS applicant. So long as an AMTS applicant's engineering analysis method provides sufficient protection to a broadcaster, the Commission should accept the applicant's choice of method.

Havens's suggestion that providing broadcasters with copies of applications would not be a "hard burden" was not a sufficient basis for imposing such a requirement. Since Havens presented no basis for believing that imposing such a requirement would serve any public interest, his suggestion should be rejected.

While the matter of fill-in stations, discussed at Havens's exhibit 3, is not within the scope of the Commission's Third Notice of Proposed Rule Making, Mobex will reply for the purpose of demonstrating Havens's errors on the subject. The Commission's reference at paragraph 12 of the Fourth Report and Order to "predicted interference contour" clearly refers to the contour within which there may be a potential for interference to television reception. As the Commission has recognized in the bands above 800 MHz, there is no greater interference potential created by a fill-in station, provided that the predicted interference contour of the fill-in station does not exceed the predicted interference contour of the original station.

A fill-in station can provide service to an electrically isolated area without depriving a geographic area licensee of any opportunity. Because the geographic area licensee cannot, as a practical matter, locate within the predicted interference contour of the incumbent licensee, a fill-in station does not restrain the geographic area licensee any more than does the incumbent's original station.

Mobex has replied herein to Havens's comments, but Havens's comments should be rejected, in toto, by the Commission. Section 1.49(b) of the Commission's Rules requires that

a document which exceeds ten pages shall include, "as part of the pleading or document, a table of contents with page references," 47 C.F.R. §1.49(b). Section 1.49(c) of the Commission's Rules requires that a document which exceeds ten pages shall include "a summary of the filing, suitably paragraphed, which should be a succinct, but accurate and clear condensation of the substance of the filing," 47 C.F.R. §1.49(c). Havens's filing failed to meet both requirements.

In a pleading filed with the Commission on November 22, 2000, concerning a Regionet application which has been assigned file number 853502, Regionet called to the attention of the Commission and Havens the requirement of Rule Section 1.49(c) for the filing of a summary. Therefore, Havens could not have been unaware of the requirement. Because Havens was specifically on notice, but again failed to comply with rules intended to expedite the Commission's work, Havens's comments should be expressly disregarded in their entirety.

The ARRL Request Was Well Beyond the Scope of This Proceeding

Mobex did not comment on the issue presented at paragraph 41 of the Third Further Notice of Proposed Rule Making as to whether the Commission should retain the allocation of the 219-220 MHz band to the Amateur Radio Service on a secondary basis and require AMTS geographic area licensees to provide the location of their blanket-licensed stations to the Amateur database administrator. Mobex did not object to the Commission's proposal, but cannot agree with an extraneous request by American Radio Relay League (ARRL).

Beyond the scope of the above captioned matter, ARRL suggested that the Commission turn on its head the concept of secondary status afforded to Amateur operations within 80 km of an AMTS station. ARRL would wrongly place a burden on the AMTS operator to show a technical reason for rejecting a request for Amateur operation within 80 km of an AMTS station. ARRL's suggestion was counter to the entire thread of the Commission's rule making for a secondary allocation and would necessarily involve the Commission in resolving an unending stream of litigation concerning such Amateur requests.

From the beginning, in its Notice of Proposed Rule Making in ET Docket No. 93-40, the Commission stated that it believed that it was "appropriate to provide AMTS licensees the maximum, but still flexible, protection afforded by the option of rejecting an amateur operation closer than" 80 km, 8 FCC Rcd 2352, 2356 (1993). In adopting the secondary Amateur allocation, the Commission struck the correct balance to assure that AMTS systems are protected against interference from secondary Amateur stations. Specifically, the Commission stated that it was adopting "rules that prevent 219-220 MHz operations within 80 kilometers (km) of AMTS stations without the AMTS licensees' approval," 10 FCC Rcd 4446, 4448 (1995). Further, the Commission recognized that its own "analysis of this band indicates that amateur operations within 80 km of AMTS stations have a potential to cause interference," and the Commission made clear that it would "not mandate that AMTS licensees must allow amateur 219-220 MHz stations to operate within 80 km for interference concerns," *id.* at 4451. Amateur licensees have been well aware of the Commission's interference concerns for more than five years and ARRL showed

no change in circumstances to justify upsetting the primary/secondary relationship of the two Radio Services.

It is not Mobex policy to say "never" with respect to Amateur operations within 80 km of its AMTS stations. Although Mobex's recently acquired subsidiary, Regionet, may not have yet granted written approval for any proposed Amateur operation within 80 km of its stations, the burden should remain on the Amateur to demonstrate no potential for interference to satisfaction of the AMTS licensee. Therefore, the Commission should hold that ARRL's suggestion was outside the scope of the above captioned proceeding and deny the request accordingly.

KM LPTV's Untimely Comments Should be Disregarded

The comments of KM LPTV of Chicago-13, L.L.C. (KM) were untimely filed. As shown by Exhibit I, the Third Notice of Proposed Rule Making was published in the Federal Register on December 8, 2000, 65 FR 76966. Therefore, Comments were due to be filed on or before February 6, 2001. KM incorrectly relied on the publication of the Fourth Report and Order on December 13, 2000, 65 FR 77821, to choose the date on which it filed its comments. Because KM failed to request leave to file its comments late, KM's comments should be disregarded, however, in an abundance of caution, Mobex will reply to KM's untimely filed comments.

Once again, it is necessary to explain that an engineering study does not result in a determination of "predicted interference", as again alleged at pages 2 and 3 of KM's comments. An engineering study only ascertains whether there is some potential for interference within a

certain area. Because KM based its entire statement of its interest in the above captioned proceeding on an incorrect understanding of the nature of the engineering requirement, KM's comments should be disregarded.

Although KM acknowledged that its protest against Regionet's application for an AMTS system at Chicago was resolved by a settlement agreement, KM attempted in its comments to again raise the issues which it had raised in the Chicago matter. KM's comments also sought an untimely appeal of the Commission's action in Regionet Wireless License, LLC, 15 FCC Rcd 11013 (WTB 2000). Although KM's concerns have been met by the licensees of both frequency Group A and frequency Group B at the John Hancock Building, KM continued to attempt to make an issue of a, thus far, unique situation involving a television station with a directional antenna. Among the hundreds of AMTS license applications which have been granted, only one protected television station had a problem with its directional antenna pattern. Clearly, KM's desire is to avoid losing viewers, omnidirectionally, outside of its authorized Grade B contour, and its directional antenna concern should be seen to be too narrow in scope to be appropriate for rule making.[1]

Mobex concurs with KM's position that greater co-channel protection is required between AMTS systems than the standards proposed by the Commission. For the reasons stated

[1] The increase of power provided for Class A television stations solved KM's problem. KM failed to show that the change in status of a large number of Low Power stations to Class A stations was not sufficient to avoid any future controversy with AMTS operators.

by KM for its support of a 12 dB protection standard, Mobex must assume that KM would fully support the 18 dB protection ratio requested by Mobex.

At page 8 of its comments, KM suggested that the Commission should adopt as a standard the Longley-Rice method for determining the potential for interference to television reception on Channels 10 and 13. KM's sole basis for suggesting the use of the Longley-Rice method was that the Commission had adopted the method for determining interference to digital television stations. The Commission should note that the validity of the Longley-Rice method for use in digital television has not yet been established and there is reasonable doubt in the television engineering community concerning the validity of the method for that purpose, see, On the Validity of the Longley-Rice (50,90/10) Propagation Model for HDTV Coverage and Interference Analysis, www.dielectric.com/broadcast/longley-rice.asp (O. Bendov 1998). In light of the unproven validity of the Longley-Rice method for the purpose for which the Commission adopted it, the Commission would be well advised to adhere to its tentative conclusion that it should not prescribe an engineering method for AMTS applicants.

Among television broadcasters, KM was alone in filing comments in the above captioned proceeding. Therefore, the Commission may reasonably conclude that there does not appear to be widespread belief in the television industry that the Commission needs to adopt the suggestions put forth by KM.

KM was not correct in suggesting that the Commission's proposal to amend Rule Section 80.215(h)(3)(i), 47 C.F.R. §80.215(h)(3)(i), would shift the burden of proposing a plan to minimize the potential for television interference to the television broadcaster. The Commission's proposal to require an AMTS applicant to select an "especially suitable" location, rather than the "only suitable location" would merely give the AMTS applicant greater flexibility in selecting a location and relieve the AMTS applicant from a near-impossible burden of proving that its proposed location is the only suitable location.[2] The burden would remain on the AMTS applicant as the proponent of its application, while the television broadcaster would continue to have a burden to demonstrate that proposed location was not especially suitable, rather than the only suitable location.

Regionet has proposed in a many applications to notify the public by advertising that it will be commencing operation. KM suggested an arbitrary notification burden which would be cost-prohibitive for an AMTS applicant in many urban areas. Imposing such a burden would certainly severely limit the competitive vigor of persons who might seek geographic area licenses.

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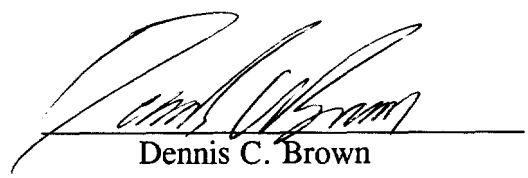
[2] It should not be forgotten that when Regionet's predecessor initially applied for a Chicago station at Sears Tower, KM took the position that the John Hancock Building was a more suitable location. When Regionet then applied for a station at John Hancock, KM protested that John Hancock was not a suitable location. Concurrently, in protesting Regionet's application for a station at Lockport, Illinois, KM suggested that Regionet should use the John Hancock Building, rather than locate a station at Lockport. The only way that the Commission can avoid subjecting an AMTS applicant to such a double shuffle again is to abolish, rather than modify, the requirement.

At paragraph 18 of its comments, KM suggested that most broadcast stations can identify their viewers. Given that perspective, the person in the best position to notify a television station's audience at lowest cost per thousand and to do it most effectively is the broadcaster, itself. Mobex would have no objection to a broadcaster's choosing to notify its listeners concerning the operation of an AMTS system. But, since the broadcaster's use of its own facilities, at no more out of pocket cost than the cost of a few seconds of electricity and a few seconds wear and tear on a computer, is the most direct means of notifying its viewers and requesting that they contact the broadcaster in the event of interference, it would be entirely unreasonable for the AMTS licensee to bear any cost burden to notify specific persons of its operation.

Conclusion

Actually operating incumbents Mobex and PSI, as well as AMTA, agree on all major points in the above captioned proceeding. For all the foregoing reasons, Havens's largely irrelevant comments should be disregarded, KM's untimely filed comments should be dismissed, the Commission should deny ARRL's request, and the Commission should adopt rules in accord with the suggestions of Mobex, PSI, and AMTA and move expeditiously to awarding geographic area AMTS licenses by competitive bidding.

Respectfully submitted,
MOBEX COMMUNICATIONS, INC.

By 
Dennis C. Brown

126/B North Bedford Street
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Dated: March 8, 2001

SUMMARY: The EPA proposes to delete the releases from the University of Minnesota Rosemount Research Center Superfund site (Site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to Part 300 of the National and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA has determined that the Site currently poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures under CERCLA are not appropriate. We are publishing this proposed rule without prior notification because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this approval is set forth in the direct final rule. If no dissenting comments are received, the deletion will become effective. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this Action must be received by January 8, 2001.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson, Chicago, IL 60604. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repository at the following location: the Minnesota Pollution Control Agency, 520 Lafayette Road North, Saint Paul, Minnesota 55155–4184.

FOR FURTHER INFORMATION CONTACT: Gladys Beard Associate Remedial Project Manager at (312) 886–7253, written correspondence can be directed to Ms. Beard at U.S. Environmental Protection Agency, (SR–6J) 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR., 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR., 1987 Comp.; p. 193.

Dated: November 28, 2000.

Elissa Speizman,

Acting Regional Administrator, EPA Region V.

[FR Doc. 00–31192 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 92–257; RM–9664; FCC 00–370]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: In this document, the Commission proposes to amend the rules governing Automated Maritime Telecommunications Systems (AMTS) and high seas public coast stations. The Commission proposes, among other things, to designate licensing regions and authorize one licensee for each currently unassigned AMTS frequency block on a geographic basis; to allow partitioning and disaggregation for AMTS geographic licensees, disaggregation for site-based AMTS licensees, and partitioning for most high seas public coast station licensees; and to establish competitive bidding procedures to resolve mutually exclusive applications for AMTS and high seas public coast spectrum. These proposed rules should increase the number and types of communications services available to the maritime community.

DATES: Comments are due February 6, 2001, Reply Comments are due March 8, 2001.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at www.fcc.gov/e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Keith Fickner, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. The Commission's Third Notice of Proposed Rule Making (3rd NPRM), PR Docket No. 92–257, FCC 00–370, adopted October 13, 2000, and released on November 16, 2000. The full text of this 3rd NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037. The full text may also be downloaded at: *http://www.fcc.gov/Wireless/Orders/2000/fcc00370.txt.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the 3rd NPRM

2. The Commission proposes a transition from the site-based licensing approach to geographic area licensing because such an approach would speed assignment of subsequent AMTS licenses, reduce processing burdens on the Commission, facilitate the expansion of existing AMTS systems and the development of new AMTS systems, eliminate inefficiencies arising from the intricate web of relationships created by site-specific authorization, and enhance regulatory symmetry.

3. The Commission seeks comment on whether the use of band manager licensing may be an appropriate alternative method of accomplishing the objectives that it strives to achieve through its partitioning and disaggregation rules. Band managers would be a class of Commission licensee that would engage in the business of making spectrum available for use by others through private, written contracts.

4. The Commission seeks comment, in light of its continuing commitment to take measures to ensure that the current and future communications needs of the public safety community are addressed, on whether it should take any steps to facilitate use of AMTS spectrum by public safety entities, including setting aside some channels for public safety use.

5. The Commission proposes to modify the requirement that AMTS stations must serve a waterway because it is inconsistent with geographic licensing and could prevent service from being offered in some licensing areas. Therefore, the Commission seeks comment on its proposal that stations may be placed anywhere within a licensee's service area so long as marine-originating traffic is given priority and incumbent operations are protected. It also seeks comment on its

CERTIFICATE OF SERVICE

I hereby certify that on this eighth day of March, 2001, I served a copy of the foregoing Reply Comments on each of the following persons by placing a copy in the United States Mail, first-class postage prepaid:

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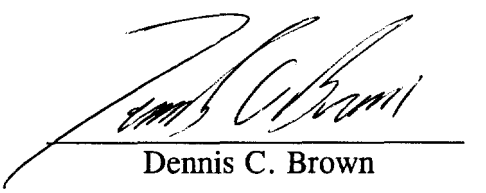

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